

Larry L. Stuler,

Plaintiff,

- vs. -

INTERNAL REVENUE SERVICE,

Defendant.

12-0391

RECEIVED

MAR 28 2012

PETITION FOR RELEASE OF RECORDS
PURSUANT TO TITLE 5 USC §552 ET SEQ
FREEDOM OF INFORMATION ACT

CLERK, U. S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

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order of 6/23/11 with considerations noted herein that are due to his abiding by said court order. Plaintiff requests this Court to construe this instant "Petition for Release of Records Pursuant to Title 5 USC §552 et seq. Freedom of Information Act" pursuant to the dictates and standards enunciated by the Supreme Court in Haines v. Kerner, 404 US 519 (1972), which requires liberal construction of all *pro se* filings.

NATURE OF ACTION

2- This instant action arises under Title 5 USC §552(a)(4)(B), seeking an Order requiring the defendant to release certain agency records as identified, set forth, and requested in petitioner's underlying Formal Notice and Demand filed pursuant to appropriate authority as codified under Title 5 USC §552, "Freedom of Information Act" (hereinafter the "Act").

3- The plaintiff asserts that all records requested by him in his Notice and Demand (hereinafter "request") are in the possession or control of the defendant.

4- This instant action also seeks a finding by the Court that the Internal Revenue Service employees responsible for withholding the documents at issue here acted arbitrarily and capriciously.

5- This instant action also seeks a finding by the Court that Defendant's employees responsible for the I.R.S.'s appeal responses to Plaintiff's court ordered administrative appeal, by their disobedience or resistance to its lawful order, are in contempt of the court order of 6/23/11.

6- Only after Plaintiff filed his previous complaint (Civil Case # 10-1342 (WDPA)) from which the court order of 6/23/11 was rendered did the Internal Revenue Service send the purportedly responsive records to Plaintiff, however, said records evidence that

multiple transactions have been redacted for many of the years in the request. In addition, the purportedly responsive records intentionally included transcripts outside the parameters of Plaintiff's request in order to exceed the 100 pages that are free under the "Act", as codified at title 5 USC §552(a)(4)(A)(iv)(II). Therefore, Defendant has yet to fulfill its legal responsibility under the "Act". Plaintiff now seeks a finding by the Court that Defendant's employees responsible for the obstruction of the administration of justice by their misbehavior, specifically falsifying government records (IMF-MCC transcripts), are in contempt of the court order of 6/23/11.

7- This instant action also seeks a finding by the Court that Defendant's employees' arbitrary and capricious actions that were part of a conspiracy planned and executed by the Internal Revenue Service to violate the "Act" by the sanctioned and organized misbehavior of its employees to obstruct the administration of justice, are in contempt of the court order of 6/23/11.

JURISDICTION

8- This action is arising under the "Act" (FOIA), an Act of Congress, and is authorized pursuant to title 5 USC §552(a)(4)(B). Title 18 USC §401 confers contempt power to the court as pertains to disobedience or resistance to its lawful order. Title 18 USC §402 confers contempt power to the court as pertains to willfully disobeying any lawful order which causes the obstruction of the administration of justice wherein there is intentional wrongdoing that constitutes a crime, in this case, falsifying government records and conspiracy to violate the "Act".

VENUE

9- Venue is properly grounded within this Honorable Court according to Title 5 USC

§552(a)(4)(B) and Title 28 USC §1402.

PARTIES

10- Plaintiff, Larry L. Stuler, is more than 18 years of age and is the proper plaintiff in this instant action as he is the party who is actually aggrieved by the agency's failure to disclose records pursuant to his court ordered administrative appeal.

11- The Internal Revenue Service is properly named as Defendant in this action under Title 5 USC §552(a)(4)(B) and Revenue Regulation Section 601.702(c)(13).

UNDERLYING FACTS INTEGRAL TO THIS CAUSE OF ACTION BEFORE PLAINTIFF'S PREVIOUS FOIA COMPLAINT IN CASE # 10-1342 (WDPA)

12- Included herein as Exhibit #2 is a FOIA request that Plaintiff sent to the U. S. Department of Agriculture dated 02/05/2005. Also included within Exhibit #2 is the original FOIA response from the USDA dated 02/28/2005 stating what the cost would be to proceed on Plaintiff's original request of 02/05/2005 since the cost would exceed "0.00" - it was estimated to cost \$760.00. Plaintiff subsequently narrowed the scope of his request and promptly received his response from the USDA. This Exhibit #2 is included in order to establish Plaintiff's previous experience with filing FOIA requests before the court order of 6/23/11 and to provide a foundation for Plaintiff's actions in his previous FOIA complaint in case # 10-1342 (WDPA). Plaintiff is compliantly abiding with the court order of 6/23/11 and nothing within this complaint is intended to be construed in any other way.

13- Included herein as Exhibit #3 is a FOIA request that Plaintiff sent to the Department of the Treasury dated 02/05/2005. The next inclusion within Exhibit #3 is the original

FOIA acknowledgement from the Department of the Treasury dated 02/22/2005 stating that they had received Plaintiff's FOIA request. The next inclusion within Exhibit #3 is the follow-up FOIA response letter from the Department of the Treasury dated 04/01/2005 stating what the cost would be to proceed on Plaintiff's original request of 02/05/2005 since the cost would exceed "0.00" - it was estimated to cost \$797.13. The Department of the Treasury included a breakdown of the costs which is also included within Exhibit #3. Next in Exhibit #3 is Plaintiff's reply dated 04/18/2005 to the Department of the Treasury's follow-up response letter of 04/01/2005 in which Plaintiff narrowed the scope of the request. And finally included within Exhibit #3 is the Department of the Treasury's FOIA cover letter of 05/10/2005 stating that the responsive records were enclosed and no cost was incurred to Plaintiff. This Exhibit #3 is included in order to establish Plaintiff's previous experience with filing FOIA requests before the court order of 6/23/11 and to provide a foundation for Plaintiff's actions in his previous FOIA complaint in case # 10-1342 (WDPA). Plaintiff is compliantly abiding with the court order of 6/23/11 and nothing within this complaint is intended to be construed in any other way. The detail included within Exhibit #3 is to establish that Plaintiff had previous FOIA experience with the Department of the Treasury.

**UNDERLYING FACTS INTEGRAL TO THIS CAUSE OF ACTION FROM
PLAINTIFF'S PREVIOUS FOIA COMPLAINT IN CASE # 10-1342 (WDPA)**

14- That on August 14, 2010, Plaintiff mailed a formal written request (Certified Mail # 7008 1140 0004 7323 2170) pursuant to 5 USC §552 et seq. of the "Act" (FOIA), addressed to "Internal Revenue Service, Disclosure Office 2, Room 3214, 600 Arch

Street, Philadelphia, PA 19106”.

15- That said request identified the records sought by Plaintiff as required by the “Act”, and complied in substantial part with all other provisions of the “Act” required of Plaintiff in seeking records or documents from a Federal Agency under the “Act” based upon Plaintiff’s previous FOIA experience as evidenced above in Paragraph 12 (with Exhibit #2) and in Paragraph 13 (with Exhibit #3). The rendering of the court order of 6/23/11 modified the standard pertaining to what constitutes a perfected FOIA request, specifically Plaintiff’s stating his agreement to pay for search and copying fees.

16- Plaintiff’s request relates to records under the exclusive control of the defendant and based upon information and belief are in the possession of the defendant, Internal Revenue Service.

17- Plaintiff had previous experience, as evidenced above in Paragraph 12 (with Exhibit #2) and Paragraph 13 (with Exhibit #3), before the court order of 6/23/11 that led him to believe that his request substantially complied with the defendant’s own regulations which govern application for release of records or documents under the “Act”. Plaintiff notes that the last line just before Plaintiff’s signature signed under penalty of perjury pursuant to Title 28 USC §1746 in the request states: “Executed this 14th day of August 14, 2010”. The “Microsoft Word” word processing program automatically entered the last part of the date “14, 2010” after Plaintiff typed the first part “Executed this 14th day of August”. Plaintiff’s intent is obvious and any denial by the Internal Revenue Service due to this typo is certainly arbitrary and capricious.

18- That the specified records or documents requested under the “Act” by Plaintiff are set forth in paragraphs 7 and 8 of his request for the years specified in paragraph 6 of his

request, with a true copy filed together with this instant action and made part hereof as Exhibit #4.

19- That in a written response dated August 18, 2010, the defendant Internal Revenue Service acting as an agent of, or otherwise under the authority of the Commissioner of the Internal Revenue, executed an obtuse denial of the plaintiff's request made under the "Act" and in their written response did not deny being in possession or control of the requested records or documents as demanded by the plaintiff under the "Act", nor did the defendant state or assert any valid "exemption" or "exclusion" as provided for under the "Act" in denying Plaintiff's statutorily protected request, all in violation of the "Act" (5 USC §552 et seq.). The defendant's response instead states that Plaintiff did not (1) establish his identity and, also (2) did not state to agree to pay for search and copying fees. Defendant's response stating that Plaintiff did not establish his identity falls under title 5 USC §552 (a)(6)(A)(i)(I) which allows Defendant to make one request to Plaintiff for information that it has reasonably requested from Plaintiff. Plaintiff substantially and clearly fulfilled the first requirement cited by the defendant in its denial by establishing his identity in paragraph 3 of his request which is signed under penalty of perjury pursuant to Title 28 USC §1746 (with the typo as noted in Paragraph 17 above) on page 2 of his request. This is not a reasonable request by Defendant for information under the "Act". Defendant's response stating that Plaintiff did not state to agree to pay for search and copying fees falls under title 5 USC §552 (a)(6)(A)(i)(II) which allows Defendant to clarify with Plaintiff issues regarding fee assessment. Plaintiff had previous experience, as evidenced above in Paragraph 12 (with Exhibit #2) and Paragraph 13 (with Exhibit #3), before the rendering of the court order of 6/23/11 that led him to believe that he

substantially and clearly fulfilled the second requirement cited by the defendant in its denial in paragraph 2 of his request, specifically stating a firm promise to pay fees and costs up to the limit of \$0.00 (since the first 2 hours of search time and the first 100 pages of duplication are free as codified at title 5 USC §552(a)(4)(A)(iv)(II)) and, in addition, asking that if any costs would be incurred to send an estimate of said costs. Plaintiff did not request a waiver (see Exhibit #4). The court order of 6/23/11 only addressed Defendant's request concerning the clarification of issues regarding fee assessment under title 5 USC §552(a)(6)(A)(i)(II). The court order of 6/23/11 did not address Defendant's request for information concerning Plaintiff's identity under title 5 USC §552(a)(6)(A)(i)(I), therefore, Plaintiff's charge that he clearly established his identity still remains unaddressed and such a request by Defendant is certainly not reasonable under the "Act". This is arbitrary and capricious behavior by the defendant as defined under title 5 USC §552 (a)(4)(F)(i). A true copy of Defendant's FOIA response is included herein as Exhibit #5. The "Act" states, in part, at title 5 USC § 552(a)(6)(A)(i)(I) "that the agency may make one request to the requester for information ...that it has **reasonably** requested from the requester..." (underlining and bold face added for emphasis). Plaintiff is only requesting his own records and such a request for information by Defendant based upon a simple typo is certainly not reasonable under any circumstances. In addition, the Internal Revenue Service's own regulations at title 26 CFR § 601.702(c)(4)(i), "Form of request", states, in part, "Every effort shall be made to comply with the requests as written." Defendant has violated its own regulations with regard to its request for Plaintiff's identification. This is obviously arbitrary and capricious behavior by the Defendant.

20- That on August 23, 2010, Plaintiff timely mailed his Administrative Appeal for

Review and Remedy (Certified Mail # 7006 2150 0001 5771 8958) as required by the "Act" addressed to I.R.S. Appeals, Attn: FOIA Appeals, 5045 E. Butler Avenue, M/Stop 55201, Fresno, California 93727-5136. A true copy of Plaintiff's written Administrative Appeal is included herein as Exhibit #6 (without its enclosures as they are included herein as Exhibit #4 and Exhibit #5). Plaintiff had previous experience with FOIA requests, as evidenced above in Paragraph 12 (with Exhibit #2) and Paragraph 13 (with Exhibit #3), before the court order of 6/23/11 was rendered that he had the right to file this administrative appeal. As Exhibit #6 evidences, Plaintiff clearly noticed the I.R.S. of both of his issues for his administrative appeal; (1) the establishment of his identity, and (2) his promise to pay for search and copying fees.

21- That on September 27, 2010, the defendant Internal Revenue Service acting as an agent of, or otherwise under the authority of the Commissioner of the Internal Revenue, executed an evasive and confusing denial to the Plaintiff's administrative appeal, serving as yet another violation of the "Act" by the defendant. Defendant's FOIA appeal response of September 27, 2010, is off point in its ascertainment of its own FOIA response of August 18, 2010 (Exhibit #5). It confusingly charges that the Disclosure Officer in the I.R.S. FOIA response stated that Plaintiff did not (1) reasonably describe the records that were being requested and, also (2) that Plaintiff did not establish his identity. As evidenced in Paragraph 19 above and in Exhibit #5, within the I.R.S. FOIA response the Disclosure Officer made no mention of the description of the records requested, so Plaintiff has no idea as to what the I.R.S. FOIA appeal response is referencing. The Internal Revenue Service Statement of Procedural Rules are set out at 26 CFR 601.702 as correctly noted in the I.R.S. FOIA appeal response concerning

reasonably described records. Plaintiff has filed previous FOIA requests for Individual Master File (IMF) - Martinsburg Computer Center (MCC) transcripts many times and has received said transcripts promptly from the Internal Revenue Service. The appeal response then cites to Internal Revenue Service Statement of Procedural Rules, 26 CFR Section 607.702(l)(iii)(A) for its support concerning establishing Plaintiff's identity in his FOIA request. This is a non-existent regulation. Plaintiff cites to 26 CFR 601.702 (c)(5)(iii)(A) for the rules establishing identity. At 26 CFR 601.702(c)(5)(iii)(A)(3) it references to a statement signed under penalty of perjury pursuant to 28 USC §1746. Plaintiff substantially and clearly fulfilled the second requirement cited by the defendant in its FOIA appeal denial by establishing his identity in paragraph 3 of his request which is signed under penalty of perjury pursuant to title 28 USC §1746 (with the typo as noted in Paragraph 17 above) on page 2 of his request. A true copy of Defendant's written response and denial of the appeal is included as Exhibit #7. In their administrative appeal response of September 27, 2010 (Exhibit #7), the I.R.S. did not even mention anything to do with Plaintiff's promise to pay the fees for searching and duplication as put forth in their own FOIA response of August 18, 2010 (Exhibit #5), yet this is the basis of the court order of 6/23/11. A copy of a transcript record from a previous FOIA response for Complete IMF-MCC transcripts from the Internal Revenue Service is included herein as Exhibit #8 (this is what Plaintiff is requesting in paragraph 7 of his FOIA request). A copy of a transcript record from a previous FOIA response for Specific IMF-MCC transcripts from the I.R.S. is included as Exhibit #9 (this is what Plaintiff is requesting in paragraph 8 of his FOIA request). Exhibits #8 and #9 are included herein to evidence that Defendant has not abided by its own regulations, specifically 26 CFR §601.702 (c)(5)(i)

which states, in part, "The reasonable description requirement shall not be used by officers or employees of the Internal Revenue as a device for improperly withholding records from the public.". Once again, this is arbitrary and capricious behavior by the defendant. In addition, included as Exhibit #10 is a copy of the envelope mailed by Defendant which contained the I.R.S. FOIA appeal response. This envelope is dated September 29, 2010, which means that the I.R.S. FOIA appeal response was not mailed to Plaintiff in a timely fashion since Exhibit #7 evidences that the I.R.S. received Plaintiff's FOIA administrative appeal letter on August 30, 2010. Due to the court order of 6/23/11, the late mailing of the FOIA appeal response as was charged in Plaintiff's complaint in case # 10-1342 (WDPA) is now excused. The court order of 6/23/11 cited to title 5 USC § 552(a)(6)(C) to uphold its ruling, while Plaintiff was actually citing to title 5 USC §552(a)(6)(A)(ii) in his previous complaint (case # 10-1342 (WDPA)), however, that is no longer at issue as Plaintiff is abiding by said court order.

22- That based upon Plaintiff's previous FOIA experience that he had exhausted his administrative remedies, Plaintiff filed a motion to proceed *in forma pauperis* to file a suit pursuant to the "Act" (title 5 USC §552(a)(4)(B)) on October 13, 2010. The Court granted the motion and the suit was filed on October 14, 2010, as case # 10-1342 (WDPA).

23- That on February 8, 2011, the defendant, through its counsel, Mr. E. Christopher Lambert, finally sent the purportedly responsive records to Plaintiff which were received by him on February 9, 2011. These documents are numbered 000170 through 000282. True copies of documents 000170 through 000282, along with Defendant's counsel's cover letter, are included herein as Exhibit #11. The second half of document 000171

through to the second half of document 000188 are transcripts for years (1985, 1987, 1988, 1991, 1992, and 1993) not responsive to Plaintiff's FOIA request. The second half of document 000188 through to document 000282 are transcripts for the years responsive to Plaintiff's FOIA request (1994 through 2009), but these records evidence that multiple transactions have been redacted from both the Complete IMF-MCC transcripts as well as the Specific IMF-MCC transcripts for many of the requested years. By adding document 000170 and the first half of document 000171 together with the second half of document 000188 through document 000282, Plaintiff's FOIA request generated 95 to 96 purportedly responsive records. Defendant intentionally included the non-responsive transcripts for the years 1985, 1987, 1988, 1991, 1992, and 1993 in order to exceed the 100 page limit that is allowed by the "Act" for free, as codified at title 5 USC §552 (a)(4)(A)(iv)(II). This is more than arbitrary and capricious behavior - it is the intentional obstruction of the administration of justice by falsifying government records.

24- The Complete IMF-MCC transcripts for the year 1994 are within Exhibit #11 as documents 000188 through 000194. The last set of transactions for 1994 is located on document 000193 as a "971" transaction code dated 03/10/2008, a "520" transaction code dated 03/18/2008, and a "972" transaction code dated 04/21/2008. The last Master File code that could possibly be generated from this set of transaction codes is on document 000194 as "MF STAT-24" and dated 07/14/2008. However, there are two more Master File codes on document 000194 that have been generated as "MF STAT-26" dated 08/02/2010 and as "MF STAT-24" dated 09/13/2010. Included as Exhibit #12 are the relevant pages (see Exhibit List preceding the exhibits herein for details) of the I.R.S. Document 6209 "I.R.S. Processing Codes and Information". The I.R.S. Document 6209

(page 8-43) states: "The Master File codes are MCC computer generated as a result of the computer analysis after a transaction has posted to the Master File.". This evidences that transaction code entries have been redacted. There had to have been at least one transaction code redacted to generate the "MF STAT-26" Master File code before its date of 08/02/2010 and after the previous Master File code of "MF STAT-24" dated 07/14/2008. And there had to have been at least one transaction code redacted to generate the "MF STAT-24" Master File code before its date of 09/13/2010 and after the previous Master File code of "MF STAT-26" dated 08/02/2010. Not all transaction codes will cause a computer generated Master File code (depending on the result of the computer analysis as stated in Exhibit #12 on page 8-43), but there must be at least one transaction code entry (or a Court docket entry as will be evidenced in paragraph 27) to generate a Master File code. Some transaction codes can generate multiple Master File codes such as those marked as "NOTICE". For example, in the 1994 transcripts on document 000189 a TC 140 (see Exhibit #12 page 8-8 for details) was generated on 02/26/1996 and its associated Master File code is on document 000193 as "MF STAT-02" also dated 02/26/1996. The status code of "02" (STAT-02) was set by the TC 140 as described in Exhibit #12 on page 8-8 - it is a delinquency inquiry. Then there are several more Master File codes generated automatically as evidenced on document 000193 as "MF STAT-02" dated 03/18/1996, "MF STAT-02" dated 04/08/1996, and "MF STAT-03" dated 08/19/1996. Each of these Master File codes are followed by the term "NOTICE". The Master File code of 08/19/1996 has a status code of "03" (STAT-03) which is defined in Exhibit #12 page 8-43 as "TDI STATUS" (Taxpayer Delinquency Investigation). However, there are no transactions after the "972" code of 04/21/2008,

yet over 2 years later two new Master File codes have been generated. Note that if a transaction code is reversed, there will be an "R" after the transaction code in the IMF-MCC transcript as described under "Reversal Codes" on page 8-1 of I.R.S. Document 6209 (Exhibit #12). In some instances, a transaction code can change, such as when a TC 424 is reversed, the transaction code is then changed to a TC 425. So in this situation, the transaction entry remains on the IMF as a TC 425 reflecting that this previously was a TC 424. Regardless, whatever transactions caused the generation of the Master File codes on 08/02/2010 and 09/13/2010 have been redacted.

25- The Specific IMF-MCC transcripts for the year 1994 are within Exhibit #11 as documents 000228 through 000234. The last set of transaction for 1994 is located on document 000233 as a "971" transaction code dated 03/10/2008, a "520" transaction code dated 03/18/2008, and a "972" transaction code dated 04/21/2008. The last Master File code that could possibly be generated from this set of transaction codes is on document 000233 as "MF STAT-24" and dated 07/14/2008. However, there are two more Master File codes on document 000234 that have been generated as "MF STAT-26" dated 08/02/2010 and as "MF STAT-24" dated 09/13/2010. Included as Exhibit #12 are the relevant pages (see Exhibit List preceding the exhibits herein for details) of the I.R.S. Document 6209 "I.R.S. Processing Codes and Information". The I.R.S. Document 6209 (page 8-43) states: "The Master File codes are MCC computer generated as a result of the computer analysis after a transaction has posted to the Master File." This evidences that transaction code entries have been redacted. There had to have been at least one transaction code redacted to generate the "MF STAT-26" Master File code before its date of 08/02/2010 and after the previous Master File code of "MF STAT-24" dated

07/14/2008. And there had to have been at least one transaction code redacted to generate the "MF STAT-24" Master File code before its date of 09/13/2010 and after the previous Master File code of "MF STAT-26" dated 08/02/2010. Not all transaction codes will cause a computer generated Master File code (depending on the result of the computer analysis as stated in Exhibit #12 on page 8-43), but there must be at least one transaction code entry (or a Court docket entry as will be evidenced in paragraph 27) to generate a Master File code. Some transaction codes can generate multiple Master File codes such as those marked as "NOTICE". For example, in the 1994 transcripts on document 000229 a TC 140 (see Exhibit #12 page 8-8 for details) was generated on 02/26/1996 and its associated Master File code is on document 000233 as "MF STAT-02" also dated 02/26/1996. The status code of "02" (STAT-02) was set by the TC 140 as described in Exhibit #12 on page 8-8 - it is a delinquency inquiry. Then there are several more Master File codes generated automatically as evidenced on document 000233 as "MF STAT-02" dated 03/18/1996, "MF STAT-02" dated 04/08/1996, and "MF STAT-03" dated 08/19/1996. Each of these Master File codes are followed by the term "NOTICE". The Master File code of 08/19/1996 has a status code of "03" (STAT-03) which is defined in Exhibit #12 page 8-43 as "TDI STATUS" (Taxpayer Delinquency Investigation). However, there are no transactions after the "972" code of 04/21/2008, yet over 2 years later two new Master File codes have been generated. Note that if a transaction code is reversed, there will be an "R" after the transaction code in the IMF-MCC transcript as described under "Reversal Codes" on page 8-1 of I.R.S. Document 6209 (Exhibit #12). In some instances, a transaction code can change, such as when a TC 424 is reversed, the transaction code is then changed to a TC 425. So in this situation, the

transaction entry remains on the IMF as a TC 425 reflecting that this previously was a TC 424. Regardless, whatever transactions caused the generation of the Master File codes on 08/02/2010 and 09/13/2010 have been redacted.

26- The same scenarios as evidenced in Paragraphs 24 and 25 above also apply for the years 1995 through 2001 on both the Complete IMF-MCC transcripts and the Specific IMF-MCC transcripts. Each of these years evidences that the last set of transaction codes consists of a "971" transaction code dated 02/04/2008, a "520" transaction code dated 03/18/2008, and a "972" transaction code dated on 04/21/2008. Each of these years evidences that the Master File code that could have been generated from the last set of transaction codes is "MF STAT-24" dated 07/14/2008. Each of these years evidences that there are two more Master File codes: "MF STAT-26" dated 08/02/2010 and "MF STAT-24" dated 09/13/2010. Each of these years evidences that transactions have been redacted in both the Complete IMF-MCC transcripts and the Specific IMF-MCC transcripts. There had to have been at least one transaction code redacted to generate the "MF STAT-26" Master File code before its date of 08/02/2010 and after the previous Master File code of "MF STAT-24" dated 07/14/2008 for each of these years. And there had to have been at least one transaction code redacted to generate the "MF STAT-24" Master File code before its date of 09/13/2010 and after the previous Master File code of "MF STAT-26" dated 08/02/2010 for each of these years. Included as Exhibit #13 is a cross-reference for all of the entries to the document numbers for all of the years from 1994 through 2001.

27- That as stated above the last set of transaction codes for all of the years from 1994 through 2001 consist of a TC 971, a TC 520, and a TC 972 (all in the year 2008). These

codes are explained as follows: Exhibit #12 (I.R.S. Document 6209) page 8-41 evidences that a TC 971 represents a miscellaneous transaction (in this case a “060” Action Code which is generated to denote FMS Continuous Levy Program as evidenced on page 8-147 of Exhibit #12), and Exhibit #12 (I.R.S. Document 6209) page 8-22 evidences that a TC 520 represents that the I.R.S. has instituted litigation (this represents the I.R.S. complaint filed against Plaintiff on 02/25/2008 (Case #08-273)), and Exhibit #12 (I.R.S. Document 6209) page 8-41 evidences that a TC 972 reverses the TC 971 (in this case the “060” Action Code). That within the Complete IMF-MCC transcripts for the year 1994 on document 000190 (documents 000229 and 000230 for the Specific IMF-MCC transcripts) are a series of seven TC 971 transactions with Action Codes of “157” (page 8-149 within Exhibit #12 evidences that this relates the module to the year specified - one for each year) which tie to the seven years 1995 through 2001. That within the Complete IMF-MCC transcripts for the year 1994 on document 000194 (document 000233 for the Specific IMF-MCC transcripts) is a Master File code “MF STAT-26” dated 02/25/2008 which corresponds to the day that that I.R.S. filed a complaint against Plaintiff (case #08-273 (WDPA)). This is the entry just before the above noted Master File code “MF STAT-24” dated 07/14/2008 that all of the years from 1994 through 2001 have in common as evidenced above in paragraphs 25, 26, and 27. Only the year 1994 has this Master File code of “MF STAT-26” dated 02/25/2008 since the TC 971 codes (with Action Codes “157”) are related and the complaint involved all the years from 1994 through 2001. This is the evidence alluded to from paragraphs 24 and 25 that a Court docket entry can also generate a Master File code. On 06/16/2008 Plaintiff filed his counterclaim and answer as the defendant in case #08-273. On 07/14/2008 the

government filed its motion to dismiss and, by so doing, responded to Plaintiff's (as the defendant in that case) counterclaim in case #08-273. This is the same date as the last substantiated Master File code of "MF STAT-24" dated 07/14/2008 for all the years 1994 through 2001. The TC 520 (I.R.S. instituted litigation - Exhibit #12 page 8-22) dated 03/18/2008 for the year 1994 on document 000193 of the Complete IMF-MCC transcripts (document 000233 for the Specific IMF-MCC transcripts) has a Closing Code of "75" which on page 11-39 from Exhibit #12 (I.R.S. Document 6209) states that the Master File account is frozen with a "-W" Alpha Freeze Code. More detail concerning the "-W" Alpha Freeze Code is on page 8-53 of Exhibit #12. (All the years from 1994 through 2001 have this TC 520 dated 03/18/2008 with a closing code of "75" in both the Complete IMF-MCC transcripts and the Specific IMF-MCC transcripts). This litigation was still in progress (in the Appellate Court - case # 10-2211 (CA3)) during the time period when the unexplained Master File codes of "MF STAT-26" dated 08/02/2010 and "MF STAT-24" dated 09/13/2010 were generated for all of the years 1994 through 2001. Plaintiff has had absolutely no contact from the I.R.S. since it initiated case #08-273 (WDPA), aside from the instant FOIA correspondence. Therefore, there is no reason to have any transaction codes during that time, yet there must have been at least one before each Master File code to cause the generation of the Master File codes dated 08/02/2010 and 09/13/2010. The Complete IMF-MCC transcripts for the year 2005 are within Exhibit #11 as documents 000226 through 000227. The last transaction for 2005 is located on document 000227 as a "971" transaction code dated 06/18/2007. Since 2005 was another open year, the Master File code "MF STAT-03" dated 07/14/2008 was generated due to the government's responding to Plaintiff's (as defendant) counterclaim

in case #08-273. Suspiciously there are then two Master File codes with the same dates as the last two Master File codes evidenced for the years 1994 through 2001. They are as follows: "MF STAT-03" dated 08/02/2010, and "MF STAT-03" dated 09/13/2010. The same scenario exists for the Specific IMF-MCC transcripts on document 000278 for the year 2005. These are all Master File status code "03" and designated as "NOTICE".

28- As noted in Paragraph 27 above, the Master File code "MF STAT-24" dated 07/14/2008 for all the years 1994 through 2001 was generated by the government's response to Plaintiff's counterclaim in case # 08-273 (WDPA). In addition, Plaintiff has been proceeding *in forma pauperis* for several years now, including case # 10-1342 (WDPA), from which the court order of 6/23/11 was rendered. Plaintiff has no assets and, as well, Plaintiff was engaged with Defendant in claim/counterclaim litigation (in appellate case # 10-2211 (CA3) appealing case # 08-273 (WDPA)) - there should be no activity of any kind, yet something caused the generation of 2 Master File codes, one dated 08/02/2010 and one dated 09/13/2010, for each of the years 1994 through 2001 with no underlying transaction codes or no known court docket activity.

29- That taken in light of the redactions in the IMF-MCC transcripts as evidenced in Paragraphs 24, 25, and 26 above, the capricious and arbitrary actions of the defendant's agents in Paragraphs 19 and 21 above can now be explained. The arbitrary and capricious actions of the I.R.S. employees make no sense on their own - there had to be a motive behind these actions. This is more than simply arbitrary and capricious actions by some I.R.S. employees - it is a conspiracy planned and executed by the I.R.S. to violate the FOIA law. There were transactions posted to Plaintiff's IMF-MCC transcripts that the I.R.S. does not want Plaintiff to be able to examine - this is the motive for the arbitrary

and capricious behavior of the I.R.S. employees evidenced above in paragraphs 19 and 21. Such arbitrary and capricious behavior constitutes obstruction of the administration of justice by the sanctioned and organized actions of Defendant in a conspiracy to violate the "Act".

30- Included herein as Exhibit #14 is a FOIA response from the I.R.S. dated December 6, 2002, concerning a request by Plaintiff for Complete IMF-MCC transcripts. Note that Plaintiff's FOIA request is listed as being dated November 13, 2002, and that the records were sent to Plaintiff on December 6, 2002. However, in the instant action, Plaintiff's FOIA request was dated August 14, 2010, but Plaintiff did not receive the purportedly responsive records until February 9, 2011 - that's a time period of very nearly 6 months. Exhibit #14 evidences that the I.R.S. responded in less than 4 weeks with the Complete IMF-MCC transcripts back in 2002. The only reason for the delay in the instant case is that the I.R.S. was redacting the requested transcripts. Note also that Exhibit #14 states that the first 100 pages are free and, as evidenced in Paragraph 23 above, Plaintiff's instant FOIA request generated less than 100 purportedly responsive pages. (Exhibit #8 herein is from this FOIA response (Exhibit #14) of December 6, 2002).

31- Included herein as Exhibit #15 is a FOIA response from the I.R.S. dated January 28, 2003, concerning a request by Plaintiff for Specific IMF-MCC transcripts. Note that Plaintiff's FOIA request is listed as being dated December 13, 2002, and that the records were sent to Plaintiff on January 28, 2003. However, in the instant action, Plaintiff's FOIA request was dated August 14, 2010, but Plaintiff did not receive the purportedly responsive records until February 9, 2011 - that's a time period of very nearly 6 months. Exhibit #15 evidences that the I.R.S. responded within 7 weeks (this was over the

Christmas and New Year's Day holidays) with the Specific IMF-MCC transcripts back in 2003. The only reason for the delay in the instant case is that the I.R.S. was redacting the requested transcripts. Note also that Exhibit #15 states that the first 100 pages are free and, as evidenced in paragraph 23 above, Plaintiff's instant FOIA request generated less than 100 purportedly responsive pages. (Exhibit #9 herein is from this FOIA response (Exhibit #15) of January 28, 2003).

32- That Defendant's "Motion to Dismiss" filed on February 10, 2011, in case # 10-1342 (WDPA) includes a declaration dated February 9, 2011, by Cheryl Jackson, an I.R.S. Disclosure Officer. This declaration is included herein as Exhibit #16. Paragraphs 4 and 5 within said declaration state that she knew what Plaintiff requested, yet this is the same I.R.S. employee that signed the FOIA response (Exhibit #5 herein) stating that Plaintiff failed to identify himself and failed to agree to pay for the costs of searching and copying. Plaintiff had no further contact with Ms. Jackson after the original FOIA request, yet Ms. Jackson somehow knew who the plaintiff is and she forwarded the purportedly responsive documents to be sent to Plaintiff. Ms. Jackson's statements in paragraphs 4 and 5 of her declaration also lay waste to the I.R.S.'s FOIA appeal response (Exhibit #7) stating that Plaintiff failed to reasonably describe the requested records. Ms. Jackson states at paragraph 5 of her declaration of February 9, 2011, as follows: "By letter dated August 14, 2010, plaintiff filed a FOIA request with the Philadelphia, Pennsylvania Disclosure Office 2 seeking copies of Complete Individual Master File (IMF) - Martinsburg Computer Center (MCC) transcripts and Specific IMF - MCC transcripts for himself for tax years 1994 through 2009.". Defendant's employees have acted arbitrarily and capriciously in the instant action by stating in the I.R.S. FOIA appeal response (Exhibit

#7) that Plaintiff failed to reasonably describe the requested records. I.R.S. regulation 26 CFR §601.702(c)(5)(i) states, in part: "The reasonable description requirement shall not be used by officers or employees of the Internal Revenue as a device for improperly withholding records from the public.". Plaintiff is requesting IMF-MCC records - the very description defines the location of these records - Martinsburg Computer Center.

33- That before the court order of 6/23/11, Paragraph 12 (with Exhibit #2) and Paragraph 13 (with Exhibit #3) above could possibly have evidenced that the I.R.S. employees acted arbitrarily and capriciously in the I.R.S. FOIA response (Exhibit #5) by stating that Plaintiff failed to agree to pay for costs. Paragraph 32 above evidences that the I.R.S. employees acted arbitrarily and capriciously in the I.R.S. FOIA appeal response (Exhibit #7) by stating that Plaintiff failed to reasonably describe the requested records. The I.R.S. FOIA appeal response (Exhibit #7) is in direct opposition to Defendant's own Disclosure Officer's declaration of February 9, 2011, (Exhibit #16 at paragraphs 4 and 5) made under penalty of perjury. It would appear that the I.R.S. wants to hold Plaintiff's FOIA request as imperfect because of the typo explained in Paragraph 17 above. Yet the I.R.S. was able to mail back its FOIA response to Plaintiff's proper address, even though Plaintiff misspelled the word "Pennsylvania" in the heading of his request (Exhibit #4) as "Pennsylvania" (this is one more problem that Plaintiff had with the "Microsoft Word" word processing program in addition to the automatic generation of the date as noted above in Paragraph 17). The I.R.S. could ascertain that "Pennsylvania" actually meant "Pennsylvania", however, the I.R.S. cannot understand "Executed this 14th day of August 14, 2010" was meant to be "Executed this 14th day of August, 2010". Both Defendant's FOIA response (Exhibit #5) and Defendant's FOIA appeal response (Exhibit #7) are

trying to use the typo as described in paragraph 17 above to disallow Plaintiff's lawful FOIA request. Defendant's FOIA appeal response (Exhibit #7) then cited an unsubstantiated reason to disallow Plaintiff's lawful FOIA request as described in Paragraph 21 above, to wit, the reasonably described records. Defendant's FOIA appeal response even went so far as to provide a non-existent regulation for its basis. This evidences a coordination behind the scenes - someone orchestrated these arbitrary and capricious actions and that is evidence of a conspiracy by the I.R.S. to violate the FOIA law and obstruct the administration of justice. If Plaintiff is to be held to such minute typos (and Plaintiff is proceeding *pro se*), then Defendant's counsel, Mr. E. Christopher Lambert, should also be held to such a standard. In his declaration of February 10, 2011, filed with Defendant's "Motion to Dismiss" on February 10, 2011 (case # 10-1342 (WDPA)), he states in paragraph 2 that he has been assigned to represent the plaintiff. He has been assigned to represent the defendant. This declaration is included herein as Exhibit #17.

34- That Defendant's "Motion to Enlarge Time to Answer" of December 27, 2010 (case # 10-1342 (WDPA)), stated in paragraph 2 that "the additional time will allow the Internal Revenue Service to narrow the issues in this case in the hopes of streamlining any further litigation". This motion is included herein as Exhibit #18. The I.R.S. was attempting to bamboozle both Plaintiff and this Honorable Court with redacted IMF-MCC transcripts. Instead of narrowing the issues and streamlining further litigation, the I.R.S. has now opened itself up to charges of its employees' misbehavior that constitute obstruction of the administration of justice through conspiracy to violate the FOIA law and falsification of government records (IMF-MCC transcripts). The I.R.S. was granted a

45 day enlargement of time to produce Plaintiff's lawfully requested IMF-MCC transcripts and has yet to produce said transcripts.

35- That on February 23, 2011, Plaintiff filed an amended complaint in case # 10-1342 (WDPA) in order to add the charges as laid out above: (1) the falsification of the proffered IMF-MCC transcripts, (2) conspiracy to violate the FOIA laws, and (3) fraud on the court by misrepresenting to the court that Defendant had delivered the requested transcripts to Plaintiff. Defendant filed a Motion to Dismiss Amended Complaint on March 23, 2011, which included several declarations wherein the declarants denied redacting anything from the IMF-MCC transcripts. Plaintiff filed his Response in Opposition on April 13, 2011, wherein he pointed out that the IMF-MCC transcripts could not be redacted after the original printing due to the complexity of the transcripts. A briefing schedule was issued by the court on June 6, 2011. Defendant filed its response brief on June 13, 2011, and Plaintiff file his response brief on June 17, 2011. Then the court order of 6/23/11 was rendered which modified the standard as pertains to what constitutes a perfected request within the "Act" (title 5 USC §552 et seq.), specifically Plaintiff's agreement to pay for search and copying fees.

**UNDERLYING FACTS INTEGRAL TO THIS CAUSE OF ACTION SINCE THE
RENDERING OF THE COURT ORDER OF 6/23/11 (CASE #10-1342 (WDPA))**

36- The court order of 6/23/11, dismissed Plaintiff's amended complaint (Case # 10-1342 (WDPA)) without prejudice by declaring that Plaintiff had not exhausted his administrative remedies by addressing only 1 of Plaintiff's charges as described in Paragraph 19 above, specifically that Plaintiff had failed to state a firm agreement to pay

fees for searching and duplication of records. The court order of 6/23/11 related to the need to clarify issues regarding fee assessment as cited at title 5 USC §552(a)(6)(A)(i)(II). However, the court order of 6/23/11 failed to address Defendant's request for identification in both the I.R.S. FOIA response of August 18, 2010 (Exhibit #5) and the I.R.S. FOIA administrative appeal response of September 27, 2010 (Exhibit #7) which at title 5 USC §552(a)(6)(A)(i)(I) states that the request for information must be reasonable.

37- That on June 27, 2011, Plaintiff filed a FOIA request with the Navy. This FOIA request is included herein as Exhibit #19. Within this FOIA request Plaintiff once again agreed to pay for search and duplication up to "\$0.00", relying on the fact that the "Act" allows 2 hours for searching and 100 pages of duplication for free as codified at title 5 USC §552(a)(4)(A)(iv)(II). The Navy responded with its first letter dated July 11, 2011, in which it stated that Plaintiff's request had been received and given case # DON 2011F071685. This letter is included herein as Exhibit #20. The Navy sent a follow-up letter dated July 15, 2011, in which it determined that it would forward Plaintiff's FOIA request under case # DON 2011F071685 to the U.S. Naval Academy. This letter is also within Exhibit #20 - note that the Navy did not find Plaintiff's request to be imperfect at that time. Then Plaintiff received a third letter from the Navy dated July 20, 2011, wherein it changed the FOIA case number to # USNA2011F070023 within the body of the letter, but stated the number to be # USNA2011F070029 within the subject line at the head of the letter. This letter is also within Exhibit #20. This letter then advised Plaintiff that his FOIA request was imperfect as determined in accordance with Secretary of the Navy Instruction 7520.42F. This letter explained that Plaintiff had not stated his willingness to pay fees associated with the processing the request. This evidences that the

standard for determining an imperfect FOIA request had been modified after the rendering of the court order of 6/23/11 from what Plaintiff had previously experienced as evidenced above in Paragraph 12 (with Exhibit #2) and in Paragraph 13 (with Exhibit #3). The court order of 6/23/11 did not cite to any previous case law to support its decision that Plaintiff's statement that he would promise to pay fees and costs up to the amount of "\$00.00" was not a promise to pay anything - the court ruled that it was a promise in form only and not in substance. Navy instruction 7520.42F upholds the court order of 6/23/11.

38- That after deciding not to appeal the court order of 6/23/11 as was his right (based upon Plaintiff's previous FOIA experience as evidenced above in Paragraph 12 and Paragraph 13), but instead to abide by it, Plaintiff filed his administrative appeal by Certified Mail (7010 0290 0000 5240 9070) with the I.R.S. on September 14, 2011, as directed by the court order of 6/23/11. This administrative appeal is enclosed herein as Exhibit #21 (without its enclosures as they are included herein as Exhibit #4, Exhibit #11 (cover letter and relevant transcripts - those noted in Exhibit #13), and Exhibit #5, respectively) along with the United States Postal Service's "Track and Confirm" statement for the Certified Mail. Plaintiff immediately noticed the I.R.S. in his administrative appeal that it was being filed pursuant to the court order of 6/23/11 in case # 10-1342 (WDPA). Plaintiff also noticed the I.R.S. that the records proffered during case # 10-1342 (WDPA) included both (1) unresponsive records for years not requested and (2) transcripts evidencing Master File codes for many years with no underlying transaction codes or any known Federal Court docket entry. And finally Plaintiff noticed the I.R.S. that the original I.R.S. response of August 18, 2010 (Exhibit #5), requested

information concerning identification that was already legally included within Plaintiff's original request (Exhibit #4).

39- That on October 5, 2011, the I.R.S. sent its first FOIA administrative appeal response informing Plaintiff that the retrieval and review of the transcripts would take several weeks, possibly longer than the 20 business days required by the "Act". This I.R.S. letter is enclosed as Exhibit #22. This letter only concerned the proffered transcripts from case # 10-1342 (WDPA) and did not reference Plaintiff's original FOIA case #02-2010-02594 (see Exhibit #5) as the proffered transcripts were sent during case # 10-1342 (WDPA) proceedings. Note that Exhibit #22 is addressed improperly to Plaintiff at "565 ADDISON AVENUE" instead of "565 ADDISON STREET". Note also that this letter was signed by Appeals Officer Corina Arredondo with Employee ID # 1000157524. No mention was made by Defendant in this letter (Exhibit #22) about Plaintiff's original FOIA request (Exhibit #4) and Defendant's FOIA response (Exhibit #5), specifically Defendant's FOIA response request for Plaintiff's identification. That the I.R.S. could require more time to retrieve and review the IMF-MCC transcripts is similar to Plaintiff's experience as evidenced in Exhibit #3 wherein it took several months to get his requested records from the Department of the Treasury.

40- That on October 11, 2011, the I.R.S. sent its second FOIA administrative appeal response, this time informing Plaintiff that his administrative appeal of the I.R.S. FOIA response dated August 18, 2010 (Exhibit #5), was out of time and cited 26 CFR 601.702 as the basis for its decision to state that Plaintiff's appeal rights had lapsed. This letter is included herein as Exhibit #23. This letter did cite Plaintiff's original FOIA case #02-2010-02594 (see Exhibit #5) as it only concerned Plaintiff's original FOIA request

(Exhibit #4) and Defendant's FOIA response (Exhibit #5) but made no mention of the proffered IMF-MCC transcripts from case # 10-1342 (WDPA). Note that this letter is improperly addressed to "LARRY L STULLER" at "565 ADDISON AVENUE". Note also that this letter was signed by Appeals Team Manager C. Ace and that the person to contact is again Corina Arredondo, but this time citing Employee # 157545. As evidenced in Exhibit #21, Defendant's employees were immediately notified in Plaintiff's administrative appeal that it was filed pursuant to the court order of 6/23/11. The I.R.S. has nothing but contempt for the "Act" and the court order of 6/23/11. At no time has the I.R.S. justified its unreasonable request to Plaintiff concerning the establishment of his identity. This is the epitome of arbitrary and capricious behavior. This is a continuation of the Defendant's conspiracy to intentionally violate the provisions of the "Act" in order to keep secret whatever it is that Defendant does not want to allow Plaintiff to review in the lawfully requested IMF-MCC transcripts.

41- That on November 2, 2011, Plaintiff sent an inquiry by Certified Mail (# 7006 2150 0001 5771 9047) to the I.R.S. requesting the status of the retrieval and review of the IMF-MCC transcripts and included Defendant's appeal response letter of October 5, 2011. Plaintiff's follow-up letter is included herein as Exhibit #24 (without its enclosure as it is included herein as Exhibit #22). Also included within Exhibit #24 is the United States Postal Service's "Track & Confirm" statement for the Certified Mail evidencing that this letter was received by Defendant on November 4, 2011. No response was ever received by Plaintiff to his inquiry about the IMF-MCC transcripts. The first I.R.S. FOIA administrative appeal response (Exhibit #22) only addressed the transcripts that were proffered during the proceedings of case # 10-1342 (WDPA), but not the original FOIA

request. The second I.R.S. FOIA administrative appeal response (Exhibit #23) only addressed the original FOIA request, but not the proffered transcripts during the proceedings of case #10-1342 (WDPA). As evidenced in Paragraph 13 (with Exhibit #3), Plaintiff has had previous experience that a FOIA request could take longer than the 20 days in some instances.

42- That on January 5, 2012, Plaintiff sent another follow-up letter by Certified Mail (# 7006 2150 0001 5771 9191) to the I.R.S. notifying Defendant that Plaintiff had not yet been notified about his IMF-MCC transcripts and was preparing to file suit. This letter is included herein as Exhibit #25 (without its enclosure as it is included herein as Exhibit #22) along with the United States Postal Service's "Track & Confirm" statement for the Certified Mail evidencing that Defendant received it on January 7, 2012.

43- That on January 26, 2012, Defendant sent a final administrative appeal response to Plaintiff notifying him that all of the issues responded to by the previous I.R.S. administrative appeal response letters (Exhibit #22 and Exhibit #23) were considered closed. This letter is again signed by Appeals Officer Corina Arredondo with Employee # 10001575524, yet it included an unsigned I.R.S. response letter dated October 11, 2011, with Employee # 157545. This letter and its enclosure are included herein as Exhibit #26. Note that this letter does not reference Plaintiff's original FOIA case # 02-2010-02594 (see Exhibit #5), yet it includes an unsigned I.R.S. response letter that does reference the original FOIA request #02-2010-02594. Note that once again this letter is improperly addressed to Plaintiff at "565 ADDISON AVENUE". Note that the final I.R.S. administrative appeal response (Exhibit #26) states that the case was closed on October 6, 2011, yet the first I.R.S. FOIA appeal response (Exhibit #22), which was dated

October 5, 2011, stated that it could take the I.R.S. more than 20 days to retrieve and review the transcripts. Exhibit #26 evidences that the I.R.S. had no intention of retrieving and reviewing the transcripts by closing the FOIA case on October 6, 2011 - just one day after the date of the first I.R.S. FOIA appeal response of October 5, 2011 (Exhibit #22). Plaintiff could not have possibly received Defendant's FOIA appeal response letter dated October 5, 2012 (Exhibit #22), yet the I.R.S. states that it closed the case on October 6, 2012. Defendant is defying the court order of 6/23/11. Defendant now wants to rely on the 35 day time frame cited within 26 CFR 601.702 to not only refuse to explain its unreasonable request for Plaintiff's identification in its FOIA response of August 18, 2010 (Exhibit #5), but also the review of the IMF-MCC transcripts that were sent during the proceedings of case # 10-1342 (WDPA)!! These I.R.S. FOIA appeal response letters are more evidence of arbitrary and capricious behavior. The number of arbitrary and capricious behavior charges continues to grow and the evidence of the overall conspiracy to violate the FOIA law cannot be denied. It is quite clear that the I.R.S. has nothing but contempt for the law and the court. Plaintiff clearly stated in his administrative review that it was submitted pursuant to the court order of 6/23/11, yet the I.R.S. wants to ignore all of the charges of Plaintiff which consist of the inclusion of unresponsive transcripts within the proffered records, the proffered IMF-MCC transcripts with redacted transactions, and the unreasonable request for Plaintiff's identification. The court order of 6/23/11 was a magnanimous gesture from the court to the I.R.S. (based upon Plaintiff's previous FOIA experience as evidenced in Paragraph 12 (with Exhibit #2) and in Paragraph 13 (with Exhibit #3)) and then the I.R.S. shows nothing but contempt for the court in return. All of Defendant's FOIA administrative appeal response letters (Exhibits

#22, #23, and #26) to Plaintiff's court ordered administrative appeal have been improperly addressed to Plaintiff because Defendant cannot legally ignore the court order of 6/23/11 as it wishes to do. The I.R.S. apparently obstructs the administration of justice at every turn.

44- That the actions of Defendant are in direct violation of the Attorney General's Memorandum for Heads of Executive Departments and Agencies of March 19, 2009, wherein it states that it rescinds the previous Attorney General's FOIA Memorandum of October 12, 2001. This memorandum states, in part, that: "Instead, the Department of Justice will defend a denial of a FOIA request only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law." This memorandum is included herein as Exhibit #27. In this instant FOIA request no statutory exemption exists concerning one's own IMF-MCC transcripts and no law prohibits a FOIA requester from reviewing his own IMF-MCC transcripts.

45- That the actions of Defendant are in direct violation of President Obama's "Memorandum for The Heads of Executive Departments and Agencies" wherein it states, in part: "The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve." (underlining added for emphasis). The entire memorandum is included herein as Exhibit #28. The I.R.S. has willfully and deliberately defied President Obama's memorandum.

46- That Plaintiff's FOIA request is for IMF-MCC transcripts. The very description of the "IMF-MCC" transcripts define the location of these transcripts - the Martinsburg Computer Center. There is no need for Defendant to have to go to great lengths to find these transcripts. That the proffered IMF-MCC transcripts have been redacted is evidence of intentional wrongdoing. Then the I.R.S.'s failure to review the IMF-MCC transcripts as the court order of 6/23/11 required evidences that the I.R.S. is continuing to intentionally violate the FOIA law and the court order of 6/23/11 through an organized conspiracy. On page 3 of the court order of 6/23/11 (Exhibit #1) it states, in part: "Plaintiff does not suggest that he has ever presented for administrative review his present contention that Defendant has made an incomplete or fraudulent disclosure.". Plaintiff has now tried to do so in his court ordered administrative appeal of September 14, 2011 (see Exhibit #21).

47- That the defendant has acted with a deliberate and wanton disregard for the rights of the plaintiff as codified under the "Act" (5 USC §552 et seq.), and, as well, for the rights of the plaintiff under the court order of 6/23/11.

48- That the defendant has acted with a deliberate and wanton disregard for the intent and will of the Congress of the United States in promulgating, enacting, and codifying the "Act" as expressed under Title 5 of the Code.

49- That the defendant has deliberately and willfully violated the "Act" and their expressed duty under it at each level of the process from receipt through court ordered review.

50- Albeit, the defendant has failed and continues to fail and refuses to release the records or documents in question here. There is no reason for any more delay on

Defendant's part. Defendant must immediately produce Plaintiff's lawfully requested IMF-MCC transcripts without any redactions. Plaintiff is lawfully entitled to see what generated the Master File codes of 08/02/2010 and 09/13/2010 on his own transcripts.

51- Defendant's agents have acted arbitrarily and capriciously in connection with the failure and refusal to release the records in question here. Plaintiff again notices the typo in his request as explained above in Paragraph 17, the disingenuous and unreasonable I.R.S. FOIA response concerning identity as explained in Paragraph 19 (Exhibit #5), the disingenuous, unreasonable, and unsubstantiated I.R.S. FOIA appeal response concerning identity and the description of the requested records as explained above in Paragraph 21 (Exhibit #7), the refusal to abide by the court order of 6/23/11 as evidenced in Paragraph 39 (Exhibit #22), the refusal to abide by the court order of 6/23/11 as evidenced in Paragraph 40 (Exhibit #23), and the final refusal to abide by the court order of 6/23/11 as evidenced in Paragraph 43 (Exhibit #26). The I.R.S.'s final FOIA appeal response (Exhibit #26) contradicts its first FOIA appeal response (Exhibit #22).

AS AND FOR PLAINTIFF'S CAUSE OF ACTION

COUNT 1

52- That Plaintiff restates and re-alleges each and every allegation of Paragraphs #1 through #51 as though fully set out here in Count 1.

53- That Defendant is in possession and control of the records duly requested by Plaintiff under the "Act".

54- That Plaintiff filed his court ordered FOIA administrative appeal with the I.R.S. for the release of the requested records, yet Defendant has failed and refused to release same.

55- That Defendant's failure to release said records is continuing to this date without justifiable excuse or any validly claimed exemption or exclusion under the "Act" whatsoever.

56- That for each of the reasons as set forth herein Plaintiff is entitled to judgment against Defendant requiring Defendant to release the said records or documents forthwith, including the redacted transactions as evidenced in Exhibit #11 that generated the Master File codes of 08/02/2010 and 09/13/2010 in many of the years' transcripts.

57- That for each of the reasons as set forth herein Plaintiff is entitled to findings that the I.R.S. employees responsible for withholding the documents at issue here have acted arbitrarily and capriciously throughout this entire scenario.

58- That for each of the reasons as set forth herein Plaintiff is entitled to a finding that Defendant's employees are in contempt of the court by closing out Plaintiff's FOIA administrative appeal in direct violation of the court order of 6/23/11 in case # 10-1342 (WDPA). Although the "Act" only authorizes the court to punish a federal employee for contempt charges under title 5 USC §552(a)(4)(G), the court has the inherent power to punish for contempt under title 18 USC §401. In Kelton v US (1923, CA3) 264 US 590, the court held: "That order is not addressed to persons cited for contempt is immaterial if they have knowledge of order.". Kelton also held that: "In proceedings charging defendants with contempt of court and willful violation of court order, defendants fell within class of persons named in contempt provision of law, despite fact that order of court was not addressed to them, because "other person" contemplated by law means any person who, having knowledge of order, violates it.". As evidenced in Exhibit #21, the I.R.S. employees had knowledge of the court order of 6/23/11 from case # 10-1342

(WDPA). "Power to punish for contempt is inherent in all courts and essential to administration of justice." Marcus v PA Trust Co. (1927, CA3) 23 F2d 303. "It is duty of judge to take affirmative action under 18 §401 when lawful commands of court are defied." In re Fletcher 216 F2d 915.

59- That for each of the reasons as set forth herein Plaintiff is entitled to a finding that Defendant's employees are in contempt of the court order of 6/23/11 by their misbehavior which obstructed the administration of justice by falsifying government records, specifically IMF-MCC transcripts, in violation of the "Act". Title 5 USC §552(d) states, in part: "This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section." Under title 18 §402 the court may find Defendant in contempt of the court for obstructing the administration of justice where the wrongdoing is intentional and constitutes a crime. "Foundation for criminal contempt power is need to protect judicial process from willful impositions, particularly those designed to hobble normal machinery of justice." In re Brown (1971 App DC) 147 US App DC 156, 454 F2d 999. "Power to punish for contempt is inherent in all courts." Michaelson v U.S. (1924) 266 US 42, 69 L Ed 162, 45 S Ct 18.

60- That for each of the reasons as set forth herein Plaintiff is entitled to a finding that the I.R.S.'s employees are in contempt of the court order of 6/23/11 by their misbehavior which obstructed the administration of justice by the planned and executed arbitrary and capricious behavior throughout the proceedings that constitutes a conspiracy against Plaintiff to violate the "Act". Under title 18 §402 the court may find Defendant in contempt of the court for obstructing the administration of justice where the wrongdoing

is intentional and constitutes a crime. "Degree of intentional wrongdoing is ingredient of offence of criminal contempt." In re Brown, *supra*.

DAMAGES

61- The unlawful acts of Defendant have caused Plaintiff to be denied access to records and information, which under law, he is entitled to receive. The unlawful acts of Defendant have caused Plaintiff to be denied access to records for over 18 months now.

REQUEST FOR RELIEF

Wherefore, based upon all of the foregoing facts, Plaintiff is entitled to the following relief:

- 1-** An order of this Court requiring Defendant to release all of the records or documents referred to above pursuant to the "Act" without further delay, including the redacted transactions that generated the Master File codes of 08/02/2010 and 09/13/2010 in many of the requested years' transcripts.
- 2-** A finding by this Court that Defendant's Agents have acted arbitrarily and capriciously in connection with their failure to release the records or the documents in question here.
- 3-** A finding by this Court that Defendant's employees responsible for the I.R.S. FOIA administrative appeal responses (Exhibits #22, #23, and #26) to Plaintiff's court ordered FOIA administrative appeal (Exhibit #21) are in contempt of the court order of 6/23/11.

- 4- A further finding by this Court that Defendant's employees are in contempt of the court order of 6/23/11 by their misbehavior in obstructing the administration of justice, specifically falsifying government records (redacting or deleting IMF-MCC transcripts).
- 5- A further finding by this Court that Defendant's employees are in contempt of the court order of 6/23/11 by their misbehavior in obstructing the administration of justice, specifically planning and executing a conspiracy against Plaintiff to intentionally violate the "Act" as promulgated, enacted, and codified by Congress.
- 6- An Order requiring Defendant to reimburse Plaintiff for all fees and costs expended in connection with this litigation, including Mr. Robert Dickson's expenses from case # 10-1342 (WDPA).
- 7- And an Order for such other relief as the Court may deem just.

Respectfully submitted,



Larry L. Stuler, *pro se*

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(Phone: (724) 225-7926)

Dated: March 28, 2012
State of Pennsylvania
County of Washington